

Document ID: 398955v1_BLS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) CIVIL NO. CV03-00385 SOM-LEK
) (Copyright)
Plaintiff,)
) DECLARATION OF LEX R. SMITH
vs.)
)
HAWAIIAN EXPRESS SERVICE,)
INC., et al.,)
)
Defendants.)
)
)

DECLARATION OF LEX R. SMITH

I, LEX R. SMITH, hereby declare as follows:

1. I am the attorney for the Defendants C&S LOGISTICS OF HAWAII, LLC, C&S WHOLESALE GROCERS, INC., C&S ACQUISITIONS LLC; ES3, LLC, and RICHARD COHEN (“C&S”) and am licensed to practice in all of the state and federal courts in the State of Hawaii.

2. I have personal knowledge of the facts stated in this declaration and if called as a witness, I could and would testify to all matters set forth herein of my own knowledge.

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3. On March 23, 2006, I caused to be filed C&S' Motion for Attorney's Fees and Costs.

4. On March 28, 2006, I met with Plaintiff's counsel Timothy Hogan. The purpose of the meeting was to attempt to reach an agreement regarding Plaintiff's and C&S' respective motions for attorney's fees and costs.

5. The parties were unable to reach an agreement.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct.

Dated: April 6, 2006.

/s/ *Lex R. Smith*

LEX R. SMITH